IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Prem Chand Jain
Versus
Additional District Magistrate II Jaipur District Jaipur and ors.

S.B. CIVIL WRIT PETITION NO.994/2002

Date of Order : 20/8/2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Vimal Kumar Jain for the petitioner.
Shri V.S. Chauhan for the respondent.
Shri S.N. Gupta, Deputy Government Advocate for the State.

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The petitioner has challenged the order dated 19/12/2001 passed by the Additional District Collector II Jaipur District Jaipur in revision petition

filed by respondents No.3 and 4 against the patta dated 5/12/1973 whereby the Gram Panchayat Jhag allotted a piece of land measuring 150 sq.yards free of cost to the petitioner.

2) Shri Vimal Kumar Jain, learned counsel for the petitioner argued that the Additional Collector committed an error of law in setting aside the patta because the allotment of land was made to the petitioner by Gram Panchayat after fulfilling the requirement of the rules. Petitioner was living in joint family and they are five brothers. All are married yet, they have only one residential house and therefore the Gram Panchayat vide its decision dated

5/12/1975 decided to allot 150 sq.yards of land free of cost to the petitioner and as the petitioner was in possession of the land in question. He constructed the boundary wall and house thereupon. It was argued that the learned Additional Collector wrongly assumed that the petitioner was Up-Sarpanch of the Gram Panchayat at the relevant time and using his influence secured patta. The fact is that the petitioner was neither member of the Gram Panchayat nor Up-Sarpanch thereof. A certificate issued by the Block Development Officer, Panchayat Samiti Dudu, Secretary of Panchayat Samiti Jhag dated 17/1/2002 has been produced to substantiate this.

It was argued that the private respondents initially filed an appeal before the Panchayat Samiti against the aforesaid patta and when Panchayat Samiti refused to grant any interim relief, they later filed revision petition. The respondents could not be permitted to avail of two parallel remedies.

3) It is contended by the learned counsel for the writ petitioner that the appeal filed by the private respondents before the Panchayat Samiti was not withdrawn prior to filing of the revision petition. Learned counsel argued that while the revision petition was filed on 10/4/2001 whereas the

appeal was withdrawn on 10/12/2001. He further argued that patta was issued on 5/12/1975 and appeal there against was filed before the Panchayat Samiti with enormous delay on 28/2/1998 and thereafter interim relief was declined in that appeal. During pendency thereof, revision petition was filed lateron on 10/4/2001. Both, appeal as well as revision petition were thus enormously time barred. Even if no limitation is prescribed for filing revision petition, yet such petition could be entertained only within reasonable time. In order to substantiate this argument, learned counsel for the petitioner relied on the Full Bench decisions of this Court in

Chiman Lal Vs. State of Rajasthan and others : W.L.C. (Raj.) 2000(2) 1. He has also relied on **Chiranji Lal Vs. Addl.Collector III, Jaipur & Ors. RLR 2002(1) 400, Gordhan & Ors. Vs. State of Rajasthan & Ors. : 2005(2) R.D.D. 63.** On the strength of the above decisions, learned counsel for the petitioner prayed that the writ petition may be allowed and the order passed by the Additional Collector II, Jaipur District Jaipur dated 19/12/2001 be quashed and set-aside.

4) On the other hand, Shri S.N. Gupta, learned Deputy Government Advocate for the State and Shri B.S. Chouhan, learned counsel for the private

respondents opposed the writ petition and argued that free of cost allotment made to the petitioner was contrary to the relevant rules. Petitioner was not entitled to be allotted disputed land free of cost. Petitioner was a wealthy and prosperous man. He was Up-Sarpanch of the Gram Panchayat and was holding 26 bighas of agricultural land. Apart from above, he also owned a house and shop in the Jaipur City. The fact with regard to filing of appeal and withdrawing of appeal was very much mentioned in the revision. It has been stated in the reply that the appeal was withdrawn earlier than filing of revision, though the factual position is that when

revision was decided, the appeal already stood withdrawn. There was no question of applying principles of *res-judicata* in such a facts situation. At the time when the allotment was made, Rajasthan Panchayat General Rules, 1961 were in force and according to Rule 267 thereof, only such persons who were members of SC, ST and OBC landless farmers or Below Poverty Line or handicapped or those who had no residence of their own in the village or displaced persons and Ex-Military personal were entitled allotment free of cost. Enough evidence was produced before revisional authority to prove that the petitioner was having the properties in village and did not

fall in any manner in any of the aforesaid categories. Learned counsel for the respondents relied on the judgments of this Court in **Kanhaiya Lal and 4 ors. Vs. The Additional Collector, Kota and others : W.L.C. 1993(2) 453** where the Additional Collector in revision petition found that the allotment was on the fraud and suffer from ulterior motives of the functionaries of Gram Panchayat and on that basis cancelled the allotment. There was no justification to perpetuate illegality while interfering in such a matter.

5) I have given my earnest consideration to the rival submissions

of the parties made at the bar and perused the material on record as well as the case law cited at the bar.

6) Learned counsel for the petitioner raised two grounds for non-maintainability of revision petition before the Additional Collector. (i) that revision petition was filed with enormous delay and (ii) it was filed when appeal was already pending. This would not however detain this Court to examine the matter on merits because earlier than filing of the revision petition, private respondents filed appeal before the Panchayat Samiti and that was entertained and interim relief which was granted was vacated. Appeal

against the patta dated 5/12/1975 was filed on 28/2/1998 but eventually the revision petition was filed on 10/4/2001 and appeal was withdrawn on 10/12/2001. The matter was therefore examined by the Additional Collector in the revision petition on merits and it was found that the allotment of the land in dispute was made to the petitioner free of cost even though he did not fall in any of the categories referred to either under Rule 267 of the Rules of 1961 or under Rule 158 of the new Rules. On evidence, it was also found that the petitioner was not having a house of his own and shop in the Jaipur City. According to Condition No.2 of patta Annexure-1, the

construction upon the land was required to be made within two years otherwise, the patta would be liable to be cancelled but the petitioner never raised any construction.

7) Even if it is accepted that the observation of the Additional Collector that at the time of allotment of the land in question to the petitioner, he was Up-Sarpanch is held to be incorrect, other requirements of rule was not adhered to and allotment was secured even though, the petitioner was not eligible. As regards the delay, it has been contended by the learned counsel for the private respondents that they came to know about the patta issued in

favour of the petitioner at a belated stage and therefore the appeal was filed late but in the facts of the case, it is found that the Additional Collector has interfered and examined the entire matter on merits of the case. So long as findings recorded as to the eligibility and entitlement of the petitioner to allotment are not held to be factually incorrect, notwithstanding the delay, it would not be appropriate, nay, necessary, for this Court to interfere.

8) In my considered view, therefore, the order passed by the Additional Collector does not suffer from any such error apparent on the face of the record so as to warrant interference of this

Court.

The writ petition is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

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